IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO.916 of 1997
IN
SPECIAL CIVIL APPLICATION NO.3359 OF 1997 WITH
CIVIL APPLICATION NO.11196 OF 1998 WITH
CIVIL APPLICATION NO.11200 OF 1998 WITH
CIVIL APPLICATION NO.11226 OF 1997
AND
LETTERS PATENT APPEAL NO.917 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3427 OF 1997 WITH
CIVIL APPLICATION NO.7747 OF 1997
AND
LETTERS PATENT APPEAL NO.918 OF 1997
IN
SPECIAL CIVIL APPLICATION NO. 3424 OF 1997 WITH
CIVIL APPLICATION NO. 7748 OF 1997
AND
LETTERS PATENT APPEAL NO.919 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3447 OF 1997 WITH
CIVIL APPLICATION NO.7749 OF 1997
AND
LETTERS PATENT APPEAL NO.919 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3447 OF 1997 WITH
CIVIL APPLICATION NO.7749 OF 1997
AND
LETTERS PATENT APPEAL NO.920 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3421 OF 1997 WITH
CIVIL APPLICATION NO.7750 OF 1997
AND
LETTERS PATENT APPEAL NO.921 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3435 OF 1997 WITH
CIVIL APPLICATION NO.7753 OF 1997
AND
LETTERS PATENT APPEAL NO.922 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3424 OF 1997 WITH
CIVIL APPLICATION NO.7752 OF 1997
AND
LETTERS PATENT APPEAL NO.923 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3368 OF 1997 WITH

CIVIL APPLICATION NO.7755 OF 1997
AND
LETTERS PATENT APPEAL NO.924 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3432 OF 1997 WITH
CIVIL APPLICATION NO.7756 OF 1997
AND
LETTERS PATENT APPEAL NO.925 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3420 OF 1997 WITH
CIVIL APPLICATION NO.7757 OF 1997
AND
LETTERS PATENT APPEAL NO.926 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3362 OF 1997 WITH
CIVIL APPLICATION NO.7758 OF 1997
AND
LETTERS PATENT APPEAL NO.927 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3376 OF 1997 WITH
CIVIL APPLICATION NO.7760 OF 1997
AND
LETTERS PATENT APPEAL NO.928 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3437 OF 1997 WITH
CIVIL APPLICATION NO.7759 OF 1997
AND
LETTERS PATENT APPEAL NO.929 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3366 OF 1997 WITH
CIVIL APPLICATION NO.7761 OF 1997
AND
LETTERS PATENT APPEAL NO.930 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3441 OF 1997 WITH
CIVIL APPLICATION NO.7763 OF 1997
AND
LETTERS PATENT APPEAL NO.931 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3360 OF 1997 WITH
CIVIL APPLICATION NO.7762 OF 1997
AND
LETTERS PATENT APPEAL NO.932 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3361 OF 1997 WITH
CIVIL APPLICATION NO.7764 OF 1997
AND
LETTERS PATENT APPEAL NO.933 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3428 OF 1997 WITH
CIVIL APPLICATION NO.7765 OF 1997

AND

LETTERS PATENT APPEAL NO.934 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3364 OF 1997 WITH

CIVIL APPLICATION NO.7766 OF 1997

AND

LETTERS PATENT APPEAL NO.935 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3436 OF 1997 WITH

CIVIL APPLICATION NO.7770 OF 1997

AND

LETTERS PATENT APPEAL NO.936 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3426 OF 1997 WITH

CIVIL APPLICATION NO.7771 OF 1997

AND

LETTERS PATENT APPEAL NO.937 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3434 OF 1997 WITH

CIVIL APPLICATION NO.7769 OF 1997

AND

LETTERS PATENT APPEAL NO.938 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3363 OF 1997 WITH

CIVIL APPLICATION NO.7772 OF 1997

AND

LETTERS PATENT APPEAL NO.939 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3443 OF 1997 WITH

CIVIL APPLICATION NO.7773 OF 1997

AND

LETTERS PATENT APPEAL NO.940 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3372 OF 1997 WITH

CIVIL APPLICATION NO.7775 OF 1997

AND

LETTERS PATENT APPEAL NO.941 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3367 OF 1997 WITH

CIVIL APPLICATION NO.7774 OF 1997

AND

LETTERS PATENT APPEAL NO.942 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3365 OF 1997 WITH

CIVIL APPLICATION NO.7776 OF 1997

AND

LETTERS PATENT APPEAL NO.943 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3374 OF 1997 WITH

CIVIL APPLICATION NO.7777 OF 1997

AND

LETTERS PATENT APPEAL NO.944 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3375 OF 1997 WITH

CIVIL APPLICATION NO.7778 OF 1997

AND

LETTERS PATENT APPEAL NO.945 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3369 OF 1997 WITH

CIVIL APPLICATION NO.7779 OF 1997

AND

LETTERS PATENT APPEAL NO.946 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3373 OF 1997 WITH

CIVIL APPLICATION NO.7780 OF 1997

AND

LETTERS PATENT APPEAL NO.947 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3371 OF 1997 WITH

CIVIL APPLICATION NO.7781 OF 1997

AND

LETTERS PATENT APPEAL NO.948 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3378 OF 1997 WITH

CIVIL APPLICATION NO.7783 OF 1997

AND

LETTERS PATENT APPEAL NO.949 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3380 OF 1997 WITH

CIVIL APPLICATION NO.7782 OF 1997

AND

LETTERS PATENT APPEAL NO.950 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3423 OF 1997 WITH

CIVIL APPLICATION NO.7785 OF 1997

AND

LETTERS PATENT APPEAL NO.951 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3353 OF 1997 WITH

CIVIL APPLICATION NO.7784 OF 1997

AND

LETTERS PATENT APPEAL NO.952 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3342 OF 1997 WITH

CIVIL APPLICATION NO.7786 OF 1997

AND

LETTERS PATENT APPEAL NO.953 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3442 OF 1997 WITH

CIVIL APPLICATION NO.7787 OF 1997

AND

LETTERS PATENT APPEAL NO.954 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3393 OF 1997 WITH

CIVIL APPLICATION NO.7788 OF 1997

AND

LETTERS PATENT APPEAL NO.955 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3344 OF 1997 WITH

CIVIL APPLICATION NO.7789 OF 1997

AND

LETTERS PATENT APPEAL NO.956 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3446 OF 1997 WITH

CIVIL APPLICATION NO.7790 OF 1997

AND

LETTERS PATENT APPEAL NO.957 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3518 OF 1997 WITH

CIVIL APPLICATION NO.7791 OF 1997

AND

LETTERS PATENT APPEAL NO.958 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3410 OF 1997 WITH

CIVIL APPLICATION NO.7792 OF 1997

AND

LETTERS PATENT APPEAL NO.959 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3439 OF 1997 WITH

CIVIL APPLICATION NO.7793 OF 1997

AND

LETTERS PATENT APPEAL NO.960 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3433 OF 1997 WITH

CIVIL APPLICATION NO.7794 OF 1997

AND

LETTERS PATENT APPEAL NO.961 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3386 OF 1997 WITH

CIVIL APPLICATION NO.7795 OF 1997

AND

LETTERS PATENT APPEAL NO.962 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3476 OF 1997 WITH

CIVIL APPLICATION NO.7796 OF 1997

AND

LETTERS PATENT APPEAL NO.963 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3425 OF 1997 WITH

CIVIL APPLICATION NO.7798 OF 1997

AND

LETTERS PATENT APPEAL NO.964 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3377 OF 1997 WITH

CIVIL APPLICATION NO.7800 OF 1997

AND

LETTERS PATENT APPEAL NO.965 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3562 OF 1997 WITH

CIVIL APPLICATION NO.7801 OF 1997

AND

LETTERS PATENT APPEAL NO.966 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3343 OF 1997 WITH

CIVIL APPLICATION NO.7802 OF 1997

AND

LETTERS PATENT APPEAL NO.967 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3429 OF 1997 WITH

CIVIL APPLICATION NO.7803 OF 1997

AND

LETTERS PATENT APPEAL NO.968 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3337 OF 1997 WITH

CIVIL APPLICATION NO.7806 OF 1997

AND

LETTERS PATENT APPEAL NO.969 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3444 OF 1997 WITH

CIVIL APPLICATION NO.7804 OF 1997

AND

LETTERS PATENT APPEAL NO.970 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3431 OF 1997 WITH

CIVIL APPLICATION NO.7807 OF 1997

AND

LETTERS PATENT APPEAL NO.971 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3449 OF 1997 WITH

CIVIL APPLICATION NO.7809 OF 1997

AND

LETTERS PATENT APPEAL NO.972 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3448 OF 1997 WITH

CIVIL APPLICATION NO.7808 OF 1997

AND

LETTERS PATENT APPEAL NO.973 OF 1997

IN

SPECIAL CIVIL APPLICATION NO.3438 OF 1997 WITH

CIVIL APPLICATION NO.7810 OF 1997

AND

LETTERS PATENT APPEAL NO.974 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3430 OF 1997 WITH
CIVIL APPLICATION NO.7811 OF 1997
AND
LETTERS PATENT APPEAL NO.975 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3370 OF 1997 WITH
CIVIL APPLICATION NO.7812 OF 1997
AND
LETTERS PATENT APPEAL NO.976 OF 1997

IN
SPECIAL CIVIL APPLICATION NO.3445 OF 1997 WITH
CIVIL APPLICATION NO.7813 OF 1997
AND
LETTERS PATENT APPEAL NO.977 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3440 OF 1997 WITH
CIVIL APPLICATION NO.7814 OF 1997
AND
LETTERS PATENT APPEAL NO.983 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3337 OF 1997 WITH
CIVIL APPLICATION NO.7834 OF 1997
AND
LETTERS PATENT APPEAL NO.987 OF 1997
IN
SPECIAL CIVIL APPLICATION NO.3525 OF 1997 WITH
CIVIL APPLICATION NO.7848 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

SEVAKRAM PRABHUDAS

Versus

DEPUTY MUNICIPAL COMMISSIONER (V)

Appearance:

MR SB VAKIL for Appellants in all the LPAs except LPA Nos.952, 966, 955, 951, 954, 958, 962, 957, 987, 965 and 949 of 1997 wherein MR BS PATEL appears for appellants.

MR BHASKAR TANNA, Sr.Counsel with MR MR PRANAV G DESAI for Deputy Municipal Commissioner (V), Municipal Corpora- of the City of Vadodara, respondents nos.1 and 2 respectively.

MR AJ DESAI, ld.AGP for the Commissioner of Police, Baroda Police Commissionerate, respondent no.3.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision:6th/Aug /2001

COMMON CAV JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This batch of 64 Letters Patent Appeals by the original petitioners in the concerned respective Special Civil Applications is directed against the common judgment and order dated 7th August 1997 passed by the learned Single Judge whereby a group of 114 Special Civil Applications was decided.

2. The respondent, i.e. Municipal Corporation of City of Vadodara served notices upon the applicants in April 1997 requiring them to remove the encroachments made by them within 15 days of the receipt of the notices, failing which, the Municipal Corporation itself would remove the encroachments at their expenses. According to the contents of these notices, temporary licences were given to the appellants by the Municipal Corporation for placement of cabin/larry/hand cart etc. and the period of licence had expired in December 1988 and March 1989 and therefore, they were liable to be removed in view of the scheme framed pursuant to the directions of the Honourable Supreme Court.

3. Whereas such notices had been issued by the Municipal Corporation of City of Vadodara in view of the scheme framed pursuant to the directions given by the Honourable Court, we find it necessary to give some details in this regard as under:

(i) Special Civil Application No.4418 of 1982 filed

by 26 petitioners before this Court against the Municipal Corporation of the City of Vadodara and two others was decided by judgment and order rendered on 23rd Dec.1985. In this petition, the prayer was for restraining the respondents from removing the larries of the petitioner from the existing places unless the Municipal Corporation provides suitable alternative place for keeping the said larries on permanent basis to the petitioners.

(ii) Against the decision dated 23rd Dec.1985 in Special Civil Application No.4418 of 1982, Special Leave Petitions were filed before the Supreme Court wherein leave to appeal was granted and the Civil Appeals Nos.1881 to 1897 of 1986 were disposed of by the Supreme Court on 2nd May 1986 in the following terms:

"1. The petitioners/Appellants undertake to this Court that they shall remove their hand-carts and/or gallas, Cabins, etc. on or before December 31,. 1986. However, this undertaking by the appellants/petitioners will be subject to clause (2) below. Such undertakings should mention the exact places of their present trading. The undertakings to be filed by July 14, 1986.

2. The appellants/petitioners, however, will be at liberty to adopt appropriate proceedings in respect of locations of the area or the places in the trading zones where the appellants/petitioners and other hawkers will be permitted to carry on their trade in the Final Scheme.

3. The Municipal Corporation of Baroda shall give an opportunity to the appellants/petitioners to make their representations and will take them into consideration when it fixed hawking and non-hawking zones, in the Final Scheme.

4. The Municipal Corporation, Baroda, should fix such zones expeditiously and in any case on or before December 15, 1986.

5. The Interim Scheme as approved by the Surat cases in clause (5) of the Surat matters may be implemented subject to the modification that clause (4) of the Baroda Interim Scheme shall be deleted.

There is no order as to costs.

Sd/-
(R.S.Pathak, J.)
Sd/-
R.B.Misra, J.)
Sd/-
(G.L. Oza, J.)"

(iii) After the above order was passed by the Supreme Court notices were issued inviting suggestions/ representations from the interested parties. Notice dt.22.3.1987 was also published in news papers inviting the general public and hawkers to give their statements, objections and suggestions for the scheme of hawking and non-hawking zones. The scheme was thereafter finalised and adopted by the Corporation. Special Civil Application No.3138/88 was also filed challenging this scheme but this petition was along with other cognate petitions were rejected by the Division Bench of this Court on 5th Aug.1988. Yet on the plea that the provisions of the scheme have not been worked out appropriately and that suitable places had not been provided within the hawking zone, the Civil Court was approached by the holders of larry/handcart/gallas/ pathariwalas/cabins etc. and an injunction order was passed in Civil Suit No.1761 of 1989 by the Court of 6th Jt.Civil Judge (Senior Division), Vadodara.

(iv) Civil Revision Application No.281 of 1989 in this matter was then decided by this Court on 12th April 1989.

(v) Against this order dated 12th April 1989 passed in Civil Revision Application No.281 of 1989, a Special Leave Petition No.5465 of 1989 was filed by the Vadodara Municipal Corporation before the Supreme Court and this time, the Supreme Court passed an order on 3rd May 1989 dismissing the suit itself and that all interlocutory orders made therein shall stand dismissed. However, the assurance given by the Municipal Corporation was recorded to the effect that, within a week from the date of application appropriate hawking licences in the hawking zone shall be issued by the Municipal Corporation upon applications being made for such licences.

(vi) On behalf of the appellants, it has been given out that on 7th June 1976, a circular was issued by the Govt.of Gujarat not to remove the cabins without giving alternative facilities and despite this, when the cabin holders were sought to be removed, they filed Special Civil Application No.7396 of 1988 apprehending forcible eviction and obtained interim orders restraining their eviction. This Special Civil Application No.7396 of 1988

was decided by the High Court on 7th August 1996 by the following order:

"For the reasons and conclusions arrived at in Special Civil Application No.7636 of 1988 decided on 22/02/1996, these Special Civil Applications are rejected. However, it is made clear that if respondent Corporation takes decision to evict the petitioners from the subject premises, that shall be done only in accordance with law. They shall not be dispossessed for a period of 15 days from the date of order of eviction. Rule is discharged to the aforesaid extent with no order as to costs."

(vii) On 26th Dec.1996 in Misc.Civil Application No.2155 of 1996, the aforesaid order dated 7th Aug.1996 was modified so as to read the words, "from the date of the service of the order of eviction" instead of "from the date of the order of eviction."

(viii) Briefly stated, this is the history of previous litigation and in this context the impugned notices were issued in April 1997 and the reference which has been made in the notices with regard to the scheme framed pursuant to the directions of the Honourable Supreme Court is the scheme dated 21st April 1987 prepared by Shri M.K.Desai, Retd.District and Sessions Judge, Baroda, that is a report for hawking and non-hawking zones for the city of Baroda as per page No.755 onwards in the record of Letters Patent Appeal No.916 of 1997.

On the basis of this scheme, notices were issued against which Special Civil Applications were filed and the same have been rejected by the impugned common judgment and order.

(ix) It also appears that in Misc.Civil Application No.1656 of 1997 in Letters Patent Appeal No.916 of 1997, some interim order was passed. The grievance was raised that this order had been flouted and therefore, Misc.Civil Application was filed seeking contempt proceedings and in the contempt proceedings the orders were passed by this Court on 5th, 19th, 20th and 23rd Aug.1999 and against such orders, Appeal under Sec.19(1)(b) of the Contempt of Courts Act was filed before the Supreme Court and this Civil Appeal No.4280 of 2000 was dismissed by the Supreme Court.

(x) When these Letters Patent Appeals came up before us, we found that Civil Application No.11196/98

dt.30.11.98 on the basis of events subsequent to 7.8.97, i.e. the date of the impugned common order was pending. We, therefore, passed an order on 24.7.2000 that final order on this amendment application shall be passed along with the final judgment in the main appeal and Municipal Corporation may file the reply in the meantime. The Municipal Corporation placed on record the affidavit-in-reply dt.17.2.1998. While arguments in these appeals were going on, the appellants filed further draft amendment dt.26.7.2000 in the Civil Application No.11166 of 1998 and we again ordered on 26.7.2000 on this draft amendment that the same shall be considered along with the main appeal. However, the parties were allowed to address arguments on the amendment while arguing the appeals.

4. Mr.S.B.Vakil appearing on behalf of the appellants in the concerned Letters Patent Appeals arising out of the respective Special Civil Applications made the following submissions on facts:

(i) After the partition, the appellants and their predecessors came to India as displaced persons and they were given the land for carrying on the business in the year 1947. Each of the appellants was a tenant of a plot of land admeasuring 5'x5' and the Municipal Corporation had issued trade licences to the appellants for carrying on the business thereon. The land was situated in Padmavati Chaugan in Laheripura area of Ward No.1 of the Municipal Corporation over which the cabins were constructed.

(ii) His Highness of Baroda and the officers of the Baroda Government allowed them or their predecessors-in-title unconditionally, without any time limit and initially free on open plot of land admeasuring more than 5000 sq.ft. to the East of Sursagar Tank, which area is popularly known as Laheripura Maidan.

(iii) The Collector and District Magistrate, Baroda issued a letter dated 9th March 1953 that in order to accommodate as many refugees as they could, and to put them to least inconvenience, it was decided to increase the area of plot near Darbar Hall by reducing the road width to 25' as per the plans of the Municipality and 48 persons were to be accommodated on these plots near the Darbar Hall.

(iv) A letter was addressed to the President, Hawkers Association, Baroda.

(v) A letter dated 19th March 1953 was sent by the Chief Officer of Baroda Burough Municipality to the appellant Sevagram Prabhudas stating that, accommodation of 48 persons at Laheripura, 20 opposite Nyay Mandir, Padmavati Devi Chaugan and 46 near Nazarbaug footpath and the remaining at the site opposite to Santadevi Talkies was granted by the Collector on 12.3.1953 and that the list of persons to whom the said shops were to be allotted should be given.

(vi) After the integration of the former State of Baroda with the Union of India and its merger with the province of Bombay, a conference was held on 22nd March 1953 in the office of the Collector, Baroda, between the representatives of the aforesaid displaced persons to continue their business in the Laheripura Maidan including the Padmavati Chaugan, the Collector, the Dist. Supdt. of Police and the Chief Officer of the then Burough Municipality of Baroda and it was unanimously decided that the displaced persons may continue their business as before and that each of such persons should pay "ground rent" at the concessional rate of one anna per sq.ft. for the land allotted to them.

(vii) A notice dated 21st April 1953 was then issued by the Chief of the Baroda Burough Municipality informing the allottees including the appellants that they should prepare their wooden cabins after submitting rough plan and getting it approved from the Municipality.

(viii) Separate and specific plots of land of definite area were allotted to different persons on conditions that good, uniform and attractive stalls should be constructed by them.

(ix) All such displaced persons including the petitioners constructed costly permanent stalls on the respective plots allotted to them.

(x) In August 1957, the then Burough Municipality of Baroda increased the ground rent from one anna to two annas per sq.ft.

(xi) All the displaced persons including the appellants objected to the said increased rent but were compelled to pay the said increased ground rent.

(xii) The rent of two annas per sq.ft. was again sought to be increased to three annas per sq.ft. and such increase was also objected to. However, the arrears of ground rent were paid under protest at the rate of

three annas per sq.ft. for the period upto May 1955.

(xiii) The then Burough Municipality of Baroda again tried to increase the rent in excess of three annas per sq.ft.

(xiv) As the dispute arose between the Burough Municipality and the aforesaid displaced persons including the appellants as to whether the said displaced persons were the tenants or licensees in respect of the lands in their possession and occupation as well as with regard to the quantum of rent payable by them, one Gyanchand Hardasmal and three others for themselves and on behalf of 270 other persons, including the appellant doing business in Laheripura Maidan including Padmavati Chaugan filed Special Civil Suit No.1073 of 1958 in the Court of Civil Judge (Senior Division), Baroda against the then Burough Municipality of Baroda for a declaration that the Municipality had no right to recover any rent or possession of the land let out to them from any of the plaintiffs and that in the alternative, for a declaration that the Municipality had no right to recover the rent at a rate higher than two annas per sq.ft. and the consequential injunction.

(xv) This Special Civil Suit No.1073 of 1958 was dismissed by the trial Court.

(xvi) Shri Gyanchand Hardasmal and other plaintiffs filed an appeal against the dismissal of the suit in the District Court at Baroda being Regular Civil Appeal No.7 of 1962.

(xvii) The Extra Assistant Judge, Baroda who heard the appeal partly allowed the appeal on 31st August 1963 declaring that each of the plaintiffs was a tenant of the plot which had been allotted to him and that the Municipality was not entitled to evict the plaintiffs or any of them by any summary mode of eviction.

(xviii) It appears that there were three appeals against the judgment and decree in three suits of identical nature and all the three appeals were partly allowed and the decree passed by the trial Court was substituted by the following decree:

> "It is hereby declared that each of the plaintiffs is in possession of the plot allotted to him as a tenant and the defendant no.1 Municipality is not entitled to evict them by summary mode of eviction. The respondent no.1 is

hereby restrained from evicting the plaintiffs or any of them except by due process of law."

(xix) Against this decision, the then Burough Municipality of Baroda had filed appeal in this Court and the Second Appeal No.160 of 1964 was dismissed.

(xx) The appellants' case is that the shop was registered under the Bombay Shops and Establishments Act, 1948. Inspite of the decree passed by the Extra Assistant Judge, the Municipal authorities failed and refused to recognise the plaintiffs including the the appellants as tenants and therefore, the amounts of rent was deposited in the Court of Civil Judge (Senior Division), Baroda for the period upto 31st July 1966 under intimation to the Municipal Corporation authorities. The Municipal authorities withdrew the rent as was deposited except for the period of last six months. The appellant and others also paid the rent for the period of four months from August 1964 to November 1964 through a consolidated cheque along with a letter dated 26th Sept.1966 sent by one Shri Bhudarmal Chhatomal.

(xxii) On October 1, 1966, the appellant and other cabin holders received a notice No.151/226 dated Sept.28, 1966 from the respondent Corporation purporting to be a notice under Sec.437A of the Act, i.e. No.151/226 requiring them to show cause as to why they should not be asked to vacate the land in their occupation. In this notice, it was alleged that the appellants and others were only licensees in respect of the lands in their possession and that they had failed to pay the amount of licence fee legally due from them for a period of two months since 1st March 1965 and that for the said reasons an order was to be passed for their eviction under Sec.437A of the Act. A reply to this show cause notice dated 28th Sept.1966 was sent by the appellants through their Advocate to the Corporation and such registered letter was received by the Corporation in the first week of Oct.1966.

(xxiii) The respondent Corporation by its letter dated Dec.19, 1966 informed the appellant and others that the hearing of the aforesaid matter was fixed on 7th Jan.1967.

(xxiv) On 31st January 1967, the appellant and others were served with an order dated 20th Jan.1967 requiring them to vacate their land in their possession within one month of the service of the said order purporting to have

been issued under Sec.437A of the Act.

(xxv) The appellant and others then preferred a writ petition being Special Civil Application No.1124 of 1966. This writ petition was decided by a Division Bench of this Court (Coram: P.N.Bhagwati, C.J. & Baxi, J.).

(xxvi) It is the say of the appellants that against this decision of the Division Bench of this Court, the matter was carried to the Supreme Court by the State of Gujarat and the Supreme Court passed an order on 23rd Jan.1986 in Civil Appeal Nos.2184 of 1970. The contents of the order dated 23rd Jan.1986 are reproduced as under:

"In view of the judgment of this Court dated March 14, 1975 in Ahmedabad Municipal Corporation & Ors. vs. Ramanlal Govind Ram & Ors., reported in 1975 (3) S.C.R. page 935, the constitutional points raised in these two Appeals are covered by that judgment and therefore the State Appeals on the constitutional points will have to be accepted. We accept and allow the State Appeals in these two matters.

Even in the High Court the merits of ejectment were not gone into when the High Court decided the matter in favour of Respondent No.1. As a result of the constitutional points being now decided against the Respondents it will now be open to the Respondents to agitate the merits of ejectment before appropriate authorities if they are so advised. If any steps or proceedings are taken by the Respondents in that behalf, they will be dealt with in accordance with law. There will be no order as to costs.

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( )
Sd/-
( )"

(xxvii) The submission of the appellants is that no contention was raised on merits of the notice before the Supreme Court and the Supreme Court had done nothing disturbing the finding of the High Court about the invalidity and illegality of the notice and the order.

(xxviii) In the meantime, the Govt. of Gujarat, Panchayat and Health Deptt. issued a circular dtd.7.6.76 informing all the Municipal Corporations and the Municipalities that wherever Sindhi displaced persons had constructed cabins and were paying rent to local

authorities on prescribed standards, even if an occasion arises on account of inevitable circumstances to remove their cabins, that should be done only after alternative facilities were given to them and they were not required to be put to any hardship in their trade or business.

(xxix) The case of the appellants is that they were paying the rent to the respondent Corporation throughout and a copy of the receipt dtd.2.7.86 has also been enclosed.

(xxx) In October 1988, the respondent authorities launched a programme to remove all larries and gallas which were being plied on the road or cabins by the side of the road. The appellants seek to distinguish two cases inasmuch as they were cabin holders and they have their wooden cabins on the plots allotted to them and that they have been paying regular rent to the respondent Corporation.

(xxxi) The respondent yet sought to remove these cabins and even the appellants and others were required to wind up their shops to take away their cabins to some other place by saying that the roads of the City were to be beautified.

(xxxii) 48 cabin holders including the appellant therefore filed petition being Special Civil Application No.7396 of 1988 against the respondent Municipal Corporation and the Commissioner of Police against the removal of the cabins occupied by them, opposite Khajuri Masjid, Vadodara. This Court passed an order on 21st Nov.1988 to issue Rule and to continue the ad-interim relief as had been granted earlier against the eviction of the cabin holders.

(xxxiii) During the pendency of Special Civil Application No.7396 of 1988, various cabin holders paid the rent to the respondent. This Special Civil Application No.7396 of 1988 was disposed of by an order dated 7th Aug.1996 and this order was further modified on 26th Dec.1996. Thereafter, without taking any action in accordance with law, and without giving to the appellants an opportunity of being heard, the Dy.Municipal Commissioner issued the impugned notices in April 1997.

5. On the basis of the factual submissions as above, Mr.S.B.Vakil, learned Counsel for the appellants has raised the legal submissions as under:-

(i) That the appellants are tenants and were paying

the ground rent, the licence was only for the purpose of doing the business on rented premises and therefore, they could not be evicted.

(ii) That the appellants are cabin holders and their case is different from those of larry, gallas and pathariwallas.

(iii) That the present appellants were not parties in the earlier litigation in which Civil Appeals Nos.1887 to 1897 of 1986 and the Writ Petition No.651 of 1986 were/was decided by the Supreme Court on 2nd May 1986 and therefore, the said order passed by the Supreme Court was not binding on them. The Special Civil Application No.4418 of 1982 had been filed by Babubhai Gokaldas and another and the present appellants were not parties to this Special Civil Application and that the order passed by the Supreme Court on 2nd May 1986 is not a judgment in rem nor it can be said on the basis of this judgment of the Supreme Court that the rights of the appellants had been determined. Reference had been made to Sections 41 and 42 of the Indian Evidence Act.

(iv) The scheme framed by the Municipal Corporation is not a legislative scheme but only an administrative arrangement which cannot have any over-riding effect on the legal rights of any of the parties. That there cannot be any judicial legislation and in support of this submission, the following cases have been cited:

(1) 1992 Supp.(1) SCC 434 (Union of India and anr. v.Deoki Nandan Aggarwal)

(2) (1996) 10 SCC 397 (Suresh Lohiya v. State of Maharashtra and anr.)

(3) AIR 1989 SC 1899 (Asif Hameed and ors. v. State of Jammu and Kashmir and ors.)

(4) AIR 1990 SC 334 (Supreme Court Employees Welfare Association v. Union of India and ors.)

(5) AIR 1990 SC 1251 (Mullikarjuna Rao and ors. v. State of A.P. and ors. etc.)

In the case of Union of India and anr. v. Deoki Nandan Aggarwal, reported in 1992 Supp. (1) SCC 323, while dealing with the question of Pension under liberalised scheme and the High Court Judges (Conditions of Service) (Amendment) Act, 1986, it was held that it is not the duty of the Court either to enlarge the scope of

the legislation or the intention of the legislature when the language of the provisions is plain and unambiguous; the Court cannot rewrite, recast or reframe the legislation.

In the case of Suresh Lohiya v. State of Maharashtra and anr., reported in (1996) SCC 397, the Supreme Court was concerned with the question as to when forest produce under the provisions of the Forest Act, 1927 and speaking on the interpretation of Statutes, it was held that judicial legislation is not permissible.

In the case of Asif Hameed and ors. v. State of Jammu and Kashmir and ors., reported in AIR 1989 SC 1899, while dealing with the question of judicial review, it was held that Courts are not competent to either direct the legislature or executive to enact particular law and only suggestion can be given. It was a case with regard to selection to MBBS/BBS course.

In the case of Supreme Court Employees Welfare Association v. Union of India and ors., reported in AIR 1990 SC 334, all that has been held was that when the Special Leave Petition is dismissed Simpliciter, it cannot be said that there has been a declaration of law by the Supreme Court under Article 141 of the Constitution.

In the case of Mullikarjuna Rao and ors. v. State of A.P. and ors. etc., reported in AIR 1990 SC 1251, it was observed that the High Court or Administrative Tribunals cannot even indirectly require executive to exercise its rule making power.

(v) While making reference to Sec.30 of the Bombay Provincial Municipal Corporations Act, 1949 it was contended that the Municipal Commissioner under Sec.231 of the Bombay Municipal Corporations Act, 1949 had no power to remove the cabins of the appellants and the prohibition contained in Sec.230 of the Act has no application as the act is done with the written permission of the Commissioner. The right to remove is applicable only against the structure erected or set up contrary to the Bombay Provincial Municipal Corporations Act after the appointed day. The appointed day has been appointed under Sec.2(2) so as to mean that the day on which the area is constituted as a city. That Baroda City was constituted on 1.4.1966 and therefore, Sec.231(a) is not attracted.

(vi) The cabins in question were put in the year 1953

when the Bombay Provincial Municipal Corporations Act was not applicable and therefore, Sec.231(b) did not apply. The cabins are not articles hawked or exposed for sale in public place or in any public street and therefore, Sec.231(c) has no application. In this regard it has been contended that the learned Single Judge has not applied mind to the scope of Section 231 and that the impugned notices are without sanction of law, even the issue of the notices is an act without application of mind and they proceed on the basis that the appellants were licensees, while these impugned notices do not even mention the exercise of power under Sec.231 and cannot be justified thereunder and that the impugned notices are entirely with respect to the removal of cabins in implementation of the hawking and non-hawking scheme pursuant to the order of the Supreme Court which could not be applied against the appellants.

(vii) The impugned notices are also bad on the ground that no alternative sites have been given to the appellants.

(viii) Learned Counsel has then referred to the events pending Letters Patent Appeals and has submitted about the removal of the cabins and the articles therein in a high-handed manner by the respondent notwithstanding the statement made by the learned Counsel at the Bar and that the action of the respondent was with a view to over-reach the process of Court. In support of this submission, reliance has been placed on the following decisions:-

(1) AIR 1984 SC 1826 (Mohammad Idris and anr. v. Rustam Jehangir Bapuji and ors.)

(2) AIR 1990 Patna 1 (Smt.Indrawati Devi v. Bulu Ghosh and ors.)

(3) AIR 1991 SC 1054 (Sita Ram Sahu v. Smt. Lalpari Devi & ors.)

(4) AIR 1994 SC 787 (Lucknow Development Authority v. M.K.Gupta)

In the case of Mohammad Idris and anr. v. Rustam Jehangir Bapuji and ors., reported in AIR 1984 SC 1826, it was held that in cases of breach of undertaking by the party, the Court was justified in giving appropriate directions to close the breach in addition to punishing the party for contempt of Court.

In the case of Smt.Indrawati Devi v. Bulu Smt.Indrawati Devi v. Bulu Ghosh and ors., reported in AIR 1990 Patna 1, pending eviction suit, the tenant was forcibly dispossessed by taking the benefit of the vacation of the Court and the Court held that issue of mandatory injunction against the landlord to vacate the premises and put the tenant in possession was valid.

Lucknow Development Authority v. M.K.Gupta AIR 1994 SC 787 was a case under Consumer Protection Act, 1986 and while dealing with the liability in the case of misconduct by a public officer, it was held that in cases where the Commission is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, it should further direct the Department to pay the amount to the complainant from the public fund immediately, but to recover the same from those who have been found responsible for unpardonable behaviour by dividing proportionately where there are more than one functionaries.

Sita Ram Sahu v. Smt. Lalpari Devi & ors., reported in AIR 1991 SC 1054 was a case under the Contempt of Courts Act. The allegations as to justification for demolition was not beyond the pale of controversy but no serious view was taken in view of the Panchayat's direction to re-construct the building for the use of the petitioner because the Supreme Court stayed the order of eviction, but the premises were demolished notwithstanding the stay order.

It has been submitted that the Court has power to restore status-quo ante and that it is the duty of the Court to award compensation for damage done by exercising the power in an arbitrary and capricious manner by public authorities.

6. Mr.B.S.Patel appearing for appellants in LPA No. 952 of 1997 and other connected Letters Patent Appeals arising out of respective Special Civil Applications, while adopting the arguments raised by Mr.S.B.Vakil, has submitted as under:

(i) These appellants had filed a Regular Civil Suit No.381 of 1976 contending that the shops/cabins of the appellants were situated in open plot of the respondent Corporation.

(ii) The respondent Corporation filed a purshis before the Civil Judge (Junior Division), Vadodara.

(iii) The Civil Judge (Junior Division), Vadodara had already passed an order on August 16, 1977 to the effect that the possession of the suit plot shall not be taken by the respondent Corporation without obtaining a decree or legal order. Therefore the Corporation had to obtain either a decree or an order under Gujarat Public Premises (Eviction of Unauthorised Occupants), Act, 1972.

(iv) The powers under Sec.437(A) of the Gujarat Municipalities Act had not at all been exercised upto the year 1973, i.e. the year in which the said provisions had been repealed.

(v) That the provisions of Sec.221 of the Bombay Provincial Municipal Corporations Act, 1949 are not applicable as none of the appellants are either on the public street or at the place which is covered under Sec.231. At the most they can be said to be on the place of the Municipal Corporation and therefore, the powers under Sec.221 could not be exercised.

(vi) That the case of the respondent Corporation that the proceedings of framing of the scheme etc. arose in pursuance of the judgment delivered by the Division Bench of this Court (Coram: B.K.Mehta & G.T.Nanavati, JJ.). He has placed reliance on 1986 GLH 616 (Gulam Ali Gulamnabi Shaikh v. The Municipal Commissioner and ors.), particularly on para 2 of this judgment for the purpose of definition of hawkers, but this definition does not contain cabin holders and it contains only larriwallas, gallawallas and Pathariwallas and only for that reason the respondent Corporation had invited objections only from larriwallas, gallawallas and pathariwallas and not from cabin holders. In the said judgment of Gulam Ali (supra) the Division Bench of this Court had made observations about the hawkers except the petitioner in Special Civil Application No.2194 of 1982, who had put up his galla in a plot belonging to the Ahmedabad Municipal Corporation. Therefore, the appellants could not be considered to be persons on the road and in para 19 of this judgment, it was held by the Court that in so far as Special Civil Application No.2194 of 1982 is concerned, the Ahmedabad Municipal Corporation cannot proceed against the petitioner under Sec.231 of the Bombay Provincial Municipal Corporations Act and the appellants had not committed any encroachment over a public street and the case of the appellants is clearly covered by the above judgment of the Division Bench and the observations made therein and as per the decree passed by the learned Civil Judge (Junior Division),

Vadodara, the appellants were not on public street but they were on the plot of the Ahmedabad Municipal Corporation.

(vii) The scheme on the basis of which the impugned notices have been issued, does not cover the case of the present appellants.

7. Mr.B.P.Tanna appearing on behalf of the Municipal Corporation of Vadodara has submitted that the rights of the appellants claimed as tenants in view of the ground rent or in respect of the licence were there for a period of one year only; the same were terminable and in fact terminated by the Municipal Corporation under Sec.437(A). The challenge to the validity of the said provision did succeed before this Court but in the case of Ramanlal Govindram v. Ahmedabad Municipal Corporation and ors., reported in 70 (11) GLR p.1, the decision of the High Court was reversed by the Supreme Court in the case of Municipal Corporation, Ahmedabad v. Ramanlal Govindlal, reported in 1975 (16) GLR 693. He has then referred to the concluding part of the said judgment as contained in para 19 at page 697 and Para 23 and 27 thereof.

He has referred to the following pages of the paper book: 580-, 581 para 2, para 19 at page 604, 605 line 4, page 607, 610 para 22, page 611, 613 para 23, 614 para 24, para 615 para 25, 616 para 26, 618 para 28 and 29, page 622 para 32 and has submitted that the due process of law has been followed under Sec.437(A).

He has submitted that the impugned judgment in the case of Paman Bhobhrajmal Navlani v,. Dy. Municipal Commissioner, Vadodara and ors. is reported in 1997 (3) GLR 2431 and the contempt matter was decided by this Court in the case of Sevakram Prabhudas v. H.S. Patel & ors., reported in 2000 (1) GLR 715.

It has been submitted that Sec.437(A) was inserted in year 1964 and was repealed by the Act No.12 of 1973 on 26th June 1973 and the Corporation had come into existence on 1.4.1966. Therefore, there was no question of contending that the provisions of Bombay Provincial Municipal Corporations Act were not applicable.

It has been submitted by Mr.Tanna that there is no question of compensation or to order status-quo ante. According to the appellants themselves only an oral statement was made and no undertaking was given. He has referred to the duties and functions obligatory and

discretionary under Sec.63(1) and 19 of the Bombay Provincial Municipal Corporations Act read with Sec.230 and 231. It was lastly submitted by Mr.Tanna that the respondents are ready to offer alternative sites but there cannot be any choice and for the purpose of alternative sites, genuine difficulties shall be considered without any favour or partiality.

8. We have considered all the submissions made on behalf of the appellants and keeping in view the entire history of litigation and the principles laid down in the cases which have been cited before us in the light of the relevant provisions under the applicable Act, we find that all these appeals must fail for the following reasons:

A. With regard to the contention that the present appellants were not parties to the earlier writ petition in the matters which were decided by the Supreme Court on 2nd May 1986 and therefore, the scheme framed under that order dated 2nd May 1986 was not binding upon them and that the judgment of the Supreme Court was not a judgment in rem and it did not affect the rights of the appellants who were not parties before the Supreme Court, it may be straightway observed that the litigation was with regard to the removal of hand-carts/larries/gallas/pathariwalas/ cabins/stalls etc, hawking and non-hawking zones were to be included in the final scheme and the Municipal Corporation of Baroda was directed to fix such zones. Such a direction as was issued by the Supreme Court can hardly be said to be a direction in persona, it was certainly a direction in rem covering the cases with regard to removal of hand-carts/larries/gallas/ pathariwalas/cabins/stalls etc. to carry out the scheme of hawking and non-hawking zones. Several rounds of litigations had taken place in the same subject matter prior to 2nd May 1986 and it cannot be said that while issuing the directions of general nature, the Supreme Court was oblivious of the previous litigation. Not only that even after the passing of this order dated 2nd May 1986 by the Supreme Court, when the scheme was finalised and the same was challenged, such challenge failed when the matter was rejected by the Division Bench of this Court on 5th May 1988. Even then the action of the Municipal Corporation in the matter of implementation of this scheme was challenged before Civil Court in the year 1989 and when the matter was taken to the Supreme Court by the Municipal Corporation of Baroda, the Supreme Court dismissed the suit itself on 3rd May 1989 and ordered that all interlocutory orders made therein shall stand dismissed and thereafter Special Civil Application

No.7396 of 1988 was rejected by the High Court on 7th Aug.1996 and all that was ordered was that the eviction from the subject premises shall be done only in accordance with law.

In teeth of the fact-situation in its entirety, it is not possible to accept the case of the appellants that such a scheme was not binding or applicable to them, merely because they were not the parties before the Supreme Court. The scheme as was prepared after the Supreme Court's order was so prepared after inviting representations/objections/suggestions from all and sundry and the challenge to it had also failed before the Division Bench of this Court on 5th May 1988. In our opinion, the learned Single Judge has rightly held that it was a case of judgment in Rem and not in Personam and the scheme was binding on all concerned including present appellants whether they were parties before the Supreme Court or not.

B. On the basis of the order dt.31.8.1963 passed by the appellate Court (after the dismissal of Special Civil Suit No.1073/58 by the trial Court), i.e. Extra Assistant Judge, Baroda, declaring the plaintiffs in that suit as tenants of the plot which had been allotted to them and on the basis of the order dt.16.8.1977 passed by the Civil Judge (J.D.), Vadodara, it was claimed that the Municipal Corporation of Baroda could not proceed against them under the provisions of the Act and even on the basis of the scheme which had been framed in pursuance to the directions of the Supreme Court on 2nd May 1986 without obtaining decree from the Civil Court or an order under Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. This claim of the appellants cannot be accepted because:

(a) Baroda Municipal Corporation was constituted w.e.f. 1st April 1966 and thereafter the Commissioner of Baroda Municipal Corporation could certainly proceed u/s.231 of the Act. None of the appellants had or could have had a permanent right to continue on the plots which were given to them for hawking. The provisions of the Act could not be defeated so as to claim the so-called perpetual right as a tenant against the Municipal Corporation.

(b) The licence to carry on trade on such plot was given only for a limited period and therefore with the expiry of the licence, the right even as a tenant on such plot automatically comes to an

end rendering such parties to be liable to be evicted in accordance with due process of law. It was not a case of transfer of any plot independent of the grant of licence and mere use of the word, 'rent' in the receipt could not mean that it was a case of lease and not the licence. Even the licence was for a limited period and after the expiry of licence period, there was no question of retaining the plot by invoking Sec.60(a) and 60(b) of the Indian Easement Act, 1882 and the licence could be revoked at any time.

(c) We do not find that scheme was inconsistent to any of the provisions of the Act, such scheme was finalised after inviting objections/suggestions/ representations through a general public notice, the validity of the scheme - had attained finality when the challenge to it failed before the Division Bench of this Court and therefore the orders dt.31.8.1963 passed by the Extra Asstt. Judge, Baroda or the order dt.16.8.1977 passed by the Civil Judge (J.D.), Baroda could be no legal impediment and there was no question of Municipal Corporation of Baroda going for a decree from Civil Court or to obtain any order under the Gujarat Public Premises (Eviction of unauthorised Occupants) Act, 1972 when the Corporation itself had ample powers to proceed under the Bombay Provincial Municipal Corporations Act and to act upon and give effect to the scheme framed in accordance with law.

(d) The right to occupy the land/plot was coupled with the holding of licence to trade on the land/plot in question and therefore with the expiry of the licence the right to occupy such plot/land automatically came to an end.

(e) When the scheme was framed and finalised under the Supreme Court's order dated 2nd May 1986, when the Civil Court was again approached by the holders of hand-carts/larries/gallas/ pathariwalas/cabins/stalls etc., and an injunction order was passed in Civil Suit No.1761 of 1981 by the 6th Jt.Civil Judge (Senior Division), Baroda and the Civil Revision Application against such order was decided by the High Court on 12th April 1989, the matter was again taken to the Supreme Court by the Baroda Municipal Corporation and the Supreme Court in

its order dated 3rd May 1989 while dismissing the suit itself, ordered that all interlocutory orders made therein shall stand dismissed.

(f) It is, therefore, clear that the Supreme Court had kept in view the larger questions while passing the order dated 2nd May 1986 as well as the order dated 3rd May 1989 and there is no basis to say that as the scheme framed under the Supreme Court's order was not binding simply because certain appellants were not parties to the matter which was under consideration before the Supreme Court.

C. Learned Counsel for the appellants has also made reference to Sec.41 and 42 of the Indian Evidence Act and submitted with regard to the effect of judgments, that orders or decrees in cases other than those mentioned in Sec.41 of the Indian Evidence Act, such judgments, orders or decrees under Sec.42 of the Indian Evidence Act are relevant if they relate to matters of public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state. This argument raised with reference to the provisions of Sec.42 of the Indian Evidence Act does not at all help the case of the appellants for the simple reason that it was certainly a matter of public nature in which the directions had been issued by the Supreme Court on 2nd May 1986 and the scheme was framed accordingly No scheme of this nature could be meant for a particular party. 'Judgment in personam' is, in form as well as in substance, between the parties claiming the right and that is so inter-parties appearing by the record itself, whereas 'Judgment in rem' is one for status of a party or thing and which binds all persons; it is an adjudication pronounced upon the status of some particular subject matter. Therefore, the directions contained in the order dated 2nd May 1986 are part of a judgment which is a judgment in rem and not a judgment in personam.

D. So far as the scheme which was framed after the Supreme Court's judgment on the basis of which the appellants were sought to be evicted, the argument advanced on behalf of the appellants by the learned Counsel that it was not a legislative scheme and that the Supreme Court has no powers of judicial legislation, we find that it is not necessary that it is only through a legislative scheme that in cases of this nature, proceedings can be taken by the Municipal Corporation. All that is required is that the scheme should not be contrary to the provisions of the Act and we find that in

the scheme under which the impugned notices have been issued does not contravene any provisions of the Act. It is not a case of exercise of any powers of judicial legislation by the Supreme Court. It is very clear that right from the years in fifties the parties are litigating on the very same subject matter by way of suits and writs and we have noticed that the litigious perseverance of the parties in various proceedings has taken this controversy upto the Supreme Court more than once as has been narrated in the earlier part of this judgment while giving the history of the previous litigation. If such matters come before the Supreme court and the Supreme Court gives a direction to the Municipal Corporation to frame a scheme and the action is taken in accordance with such scheme, the challenge to which has already failed before the Division Bench of this Court and the same has become final, the action taken by the Municipal Corporation in such cases cannot be held to be illegal on the ground that the scheme was not a legislative scheme or that the Supreme Court had no powers of judicial legislation. The argument of absence of legislative scheme and exercise of powers of judicial legislation by the Supreme Court does not arise in the facts of this case and the same cannot be even conceived, much less to be countenanced. It is a case in which the direction had been issued by the Supreme Court to do complete justice between the parties so that uniformity is maintained and the action is regulated by a proper scheme in accordance with law and therefore, we find that the view taken by the learned Single Judge in this regard does not warrant any interference.

E. Besides the submissions as aforesaid, we do not find it necessary to deal with the other legal submissions which were repeated before us and which have been narrated in the earlier part of this judgment because we find that all these submissions including the submissions which have been made with regard to the provisions contained in Sec.230, 231, 437A and 384 of the Bombay Provincial Municipal Corporations Act, 1949 as also the contentions that the licence was only for the Trade but the premises were on payment of ground rent or that in certain cases the land occupied was not a part of the public street or that the cabin holders stand on a different footing etc. have all been dealt with by the learned Single Judge in detail and we find ourselves in full agreement with the detailed discussion and adjudication made by the learned Single Judge on all these legal submissions with the help of the principles laid down in various cases considered in the order of the learned Single Judge, nay, we may express without any

reservation that we cannot do better than what has been done by the learned Single Judge who has dealt with all these points with meticulous care and concern, we find that no interference is required.

9. We also find that in the cases at hand, Sec.437(A) was inserted in the year 1964 but the same was repealed by the Act 12 of 1973 on 26th June 1973 and the Corporation had come into existence on 1.4.1966. Through the amendment applications which have been filed for taking note of the subsequent developments and praying for compensation and order of status-quo ante, we find that according to the appellants themselves only an oral statement was made and no undertaking was given and therefore, in the facts of the present cases, we do not find that the appellants are entitled to any compensation or any order of status-quo ante more particularly when we find that they have no case on merits and when the appellants have finally failed in all these appeals on merits on all the counts.

10. Now the only question which remains to be considered is the question with regard to giving the alternative sites. We find that in the past also, alternative sites had been offered, but there has been a dispute with regard to the place of the sites. Learned Single Judge has rightly held that the appellants cannot have a choice of the site once the hawking and non-hawking zones have been created by a scheme which was framed after the Supreme Court's order. When the alternative sites are offered, it is for the appellants to accept the offer of the alternative site or not. Mr.Tanna, learned Counsel for the respondent Corporation has very candidly stated before us that even now the respondent Corporation is ready to offer the alternative sites, but there cannot be any choice and for the purpose of alternative sites, genuine difficulty shall be considered without any favour or partiality. We, therefore, find that to give a descent finale to this decades old controversy on purely compassionate grounds as a matter of grace as candidly stated by Mr.Tanna, learned Counsel for the Corporation, suitable alternative sites be offered to the parties/appellants who have not availed the offer of alternative site so far or to any one who may not have been given such offer, but it will be the last opportunity to avail such offers in the context of the statement made by Mr.Tanna, it goes without saying that offers of alternative sites shall be made without any favour or partiality and genuine difficulty, if any, of any party shall be taken in to account. Whatever decision with regard to the

alternative site is taken by the competent authority shall be conclusive. The respondents shall make the offer of such alternative sites afresh even now within a period of one month from the date of receipt of the certified copy of this order and it will be open for the concerned parties/appellants who may not have availed such offer earlier to accept or not to accept such offer now and they will convey their acceptance or otherwise with regard to such offer within a period of 15 days from the date of receipt of such offer and in case they accept the offer of alternative sites, they shall occupy the same within a period of one month thereafter and until they shift to the alternative sites within this period of one month, position as obtaining today shall not be disturbed.

It is also observed that in relation to this controversy or for any dispute even touching the fringes of this controversy, all Civil Courts, subordinate to High Court shall take caution that no exparte order of any nature is passed.

11. We do not find any merit in these appeals and with the observations as aforesaid, all these 64 Letters Patent Appeals are hereby dismissed with no order as to costs.

12. We do not find any case of contempt in C.A. No.11200/98 so as to order that it may be purged. This C.A. is therefore rejected.

13. In Civil Application No.11196 of 1998 and the Civil Application dated 26th July 2000 for draft amendment, the parties have already been heard on the points raised and the same have also been mentioned and dealt with in the order passed in the appeals as above and therefore, no further orders are required in both these Civil Applications. These two Civil Applications also stand disposed of accordingly.

14. Whereas the main Letters Patent Appeals are dismissed, there is no question of any stay in the Civil Applications for stay. All these Civil Applications for stay are hereby rejected.

(M.R. Calla, J.)

(R.R. Tripathi, J.)

Sreeram.